

STATE OF TENNESSEE

Office of the Attorney General **RECEIVED**



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ASSOCIATE CHIEF DEPUTY  
ATTORNEY GENERAL

Reply to:  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202

September 19, 2003

Honorable Deborah Taylor Tate  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**IN RE: PETITION OF CHATTANOOGA GAS COMPANY, NASHVILLE GAS  
COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC.,  
AND UNITED CITIES GAS COMPANY, A DIVISION OF ATMOS ENERGY  
CORPORATION FOR A DECLARATORY RULING REGARDING THE  
COLLECTIBILITY OF THE GAS COST PORTION OF UNCOLLECTIBLE  
ACCOUNTS UNDER THE PURCHASED GAS ADJUSTMENT ("PGA") RULES  
DOCKET NO: 03-00209**

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Motion to Compel Discovery Responses of United Cities Gas Company, a Division of Atmos Energy Corporation. Kindly file same in this tariff. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615) 741-8733. Thank you.

Sincerely,

*Vance C. Broemel*  
VANCE BROEMEL

Assistant Attorney General

cc: All Parties of Record

#66649

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF CHATTANOOGA GAS</b>	)	<b>DOCKET NO. 03-00209</b>
<b>COMPANY, NASHVILLE GAS COMPANY, A</b>	)	
<b>DIVISION OF PIEDMONT NATURAL GAS</b>	)	
<b>COMPANY, INC., AND UNITED CITIES GAS</b>	)	
<b>COMPANY, A DIVISION OF ATMOS</b>	)	
<b>ENERGY CORPORATION FOR A</b>	)	
<b>DECLARATORY RULING REGARDING THE</b>	)	
<b>COLLECTIBILITY OF THE GAS COST</b>	)	
<b>PORTION OF UNCOLLECTIBLE</b>	)	
<b>ACCOUNTS UNDER THE PURCHASED GAS</b>	)	
<b>ADJUSTMENT ("PGA") RULES</b>	)	
	)	

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**CONSUMER ADVOCATE AND PROTECTION DIVISION OF THE OFFICE  
OF THE ATTORNEY GENERAL'S MOTION TO COMPEL DISCOVERY  
RESPONSES OF UNITED CITIES GAS COMPANY, A DIVISION OF ATMOS  
ENERGY CORPORATION**

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Comes now Paul G. Summers, the Attorney General and Reporter, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "CAPD" or "Consumer Advocate"), and respectfully moves to compel United Cities Gas Company, A Division of Atmos Energy Corporation ("Atmos") pursuant to Rule 37.01(2) of the Tennessee Rules of Civil Procedure ("T.R.C.P.") to fully and completely answer interrogatories and produce necessary documents for each and every discovery request submitted by the CAPD in its Discovery Request dated July 28, 2003. The Consumer Advocate is not, at this time, taking a position on the objections set forth by Atmos, and reserves the right to do so when full responses are received. As grounds for this motion, the CAPD states that:

1. The CAPD served their Discovery Request upon Atmos on July 28, 2003.

2. Discovery responses were due on August 14, 2003. Thereafter, on August 13, 2003, the parties sought an extension of time to respond until August 21, 2003. All parties agreed to the extension of time to respond.
3. On August 21, 2003, Atmos' counsel indicated that they were having problems with their computers related to the recent computer virus and sought an extension to file until August 26, 2003. The CAPD agreed to the extension of time.
4. On August 26, 2003, Atmos contacted the CAPD and indicated that their client's main contact had an illness and counsel for Chattanooga Gas Company had a death in the family and requested another extension of time. Once again, the CAPD agreed to allow for another extension of time and responses were due to Discovery Request by August 29, 2003.
5. On August 29, 2003, Atmos failed to file their discovery response on the due date. They finally filed their discovery responses on September 8, 2003, 10 days after the filing deadline.
6. Atmos' discovery responses were incomplete and unresponsive. On September 15, 2003, the CAPD sent a letter to counsel for Atmos concerning the deficiencies in the discovery responses. We requested that all information and/or incomplete discovery responses be answered by close of business on Thursday, September 18, 2003. To date, we have not received any response to our letter of September 15, 2003 (Exhibit A).

The CAPD's Discovery Request is designed to discover the details of the action that Atmos is proposing they be permitted to take and the anticipated expert testimony. These discovery requests are the most efficient and expeditious way to obtain such information. Although alternative means of a discovery through deposition is also authorized by the Tennessee Rules of Civil Procedure, in light of the time frame and schedule established for this matter, the CAPD respectfully submits that written discovery requests are the most reasonable discovery method.

Furthermore, the CAPD would state that this failure to respond fully to their Discovery Request is not the first abuse of the discovery process by Atmos. Previously, Atmos received

Discovery Requests from the CAPD, reviewed them, took questions from the CAPD's Discovery Requests, and then incorporated the same into Atmos' own discovery requests, which were late filed due to the copying of the CAPD's Discovery Requests.

On July 28, 2003, Atmos filed its discovery requests past the due date set out by the hearing officer in this matter. The filings were only 2.5 hours late, however, review of the actual discovery requests reveal an obvious and significant prejudice to the consumers of Tennessee. Atmos accepted service of the Discovery Request of the Consumer Advocate, which were timely filed. Atmos then missed the filing deadline as it took the opportunity to review the Discovery Request filed by the Consumer Advocate. Subsequent to this review, Atmos revised its discovery requests by incorporating into its untimely filing several of the requests filed and served by the Consumer Advocate. By doing so, Atmos contravened the Rules of Civil Procedure and the rules of procedure promulgated by the Tennessee Regulatory Authority. The late filing by Atmos was the result of a strategic decision and not an inadvertent mistake. By circumventing the applicable rules, Atmos gained an unfair advantage to the detriment of Tennessee consumers.

It is entirely up to this Authority to decide whether or not its rules and the Rules of Civil Procedure are enforced. However, the Consumer Advocate requests that the Authority take a deep look at the problems inherent in allowing the utilities to circumvent the intent of simultaneous filings, so as to gain an unfair advantage. Without even offering to show good cause why the Authority should accept a late filing,<sup>1</sup> the actions of Atmos send a very clear

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<sup>1</sup> It is important to recognize that the burden to show good cause why the Authority should accept a late filing rests with Atmos. This burden is improperly shifted when the Authority focuses on the Consumer Advocate's need to show prejudice.

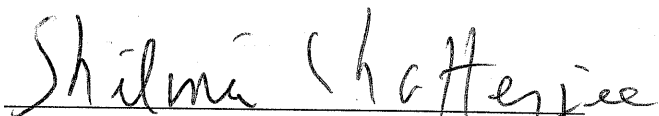
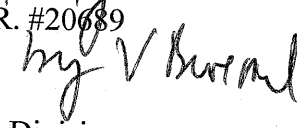
message about its willingness to seek an unfair advantage by disregarding the proper procedures of the Authority. The prejudice is real. It is unfair. Should a party in this docket choose to pursue this path in the future, in the case of deadlines related to the filing of testimony, the prejudice will be the same.

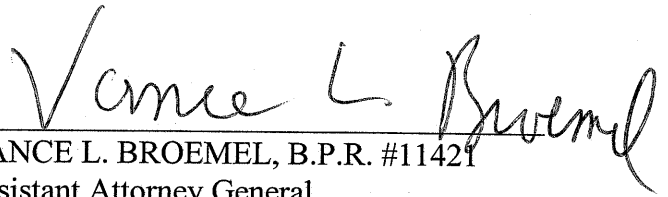
Thus, in all fairness to the parties in order to avoid further prejudice, and for the orderly development and presentation of the issues in this matter, it is appropriate and necessary for Atmos to completely and comprehensively respond to each and every one of the CAPD's Discovery Requests so that the CAPD can file their direct testimony.

For the above stated reasons, the CAPD requests that the TRA enter an Order compelling Atmos to provide full and complete responses to the CAPD Discovery Request. Additionally, the CAPD requests that the TRA consider all other appropriate sanctions.

For all the foregoing reasons, the CAPD respectfully submits that Atmos should be immediately compelled to provide all deficient information related to the Discovery Request.

RESPECTFULLY SUBMITTED,

  
SHILINA B. CHATTERJEE, B.P.R. #20689  
Assistant Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
(615) 532-3382  




VANCE L. BROEMEL, B.P.R. #11421

Assistant Attorney General

Office of the Attorney General

Consumer Advocate and Protection Division

P.O. Box 20207

Nashville, Tennessee 37202

(615) 741-8733

Dated: September 19<sup>th</sup>, 2003

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via hand delivery or facsimile on September 19, 2003

For Chattanooga Gas:

Larry Buie, General Manager  
Chattanooga Gas Company  
2207 Olan Mills Drive  
Chattanooga, TN 37421  
(423) 490-4300

Archie Hickerson  
Manager-Rates  
AGL Resources  
Location 1686  
P.O. Box 4569  
Atlanta, GA 30302-4569  
(404) 584-3855

D. Billye Sanders  
Waller, Lansden, Dortch & Davis, PLLC  
511 Union Street, Suite 2100  
Nashville, TN 37219-1760  
(615) 244-6380

For Nashville Gas:

David Carpenter  
Director-Rates  
Piedmont Natural Gas Company, Inc.  
P.O. Box 33068  
Charlotte, NC 28233  
(704) 364-3120

Bill R. Morris  
Director- Corporate Planning & Development Services  
Piedmont Natural Gas Company, Inc.  
P.O. Box 33068  
Charlotte, NC 28233  
(704) 364-3120

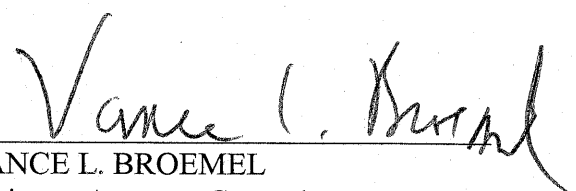


James H. Jeffries IV, Esq.  
Jerry W. Amos  
Nelson, Mullins, Riley & Scarborough, L.L.P.  
Bank of America Corporate Center, Suite 2400  
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(704) 417-3000

For United Cities Gas:

Patricia Childers  
Vice President of Regulatory Affairs  
United Cities Gas Company  
Atmos Energy Corporation  
810 Crescent Centre Drive, Suite 600  
Franklin, TN 37067-6226  
(615) 771-8332

Joe A. Conner, Esq.  
Baker, Donelson, Bearman & Caldwell  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, Tennessee 37450-1800  
(423) 756-2010

  
VANCE L. BROEMEL  
Assistant Attorney General

# EXHIBIT A

STATE OF TENNESSEE

Office of the Attorney General



**PAUL G. SUMMERS**  
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207  
NASHVILLE, TN 37202

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**ANDY D. BENNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

**LUCY HONEY HAYNES**  
ASSOCIATE CHIEF DEPUTY  
ATTORNEY GENERAL

Reply to:  
Consumer Advocate and Protection Division  
Facsimile (615) 532-2910

Via Facsimile and U.S. Mail

September 15, 2003

Joe A. Conner, Esquire  
Baker, Donelson, Bearman & Caldwell  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450-1800

**RE: PETITION OF CHATTANOOGA GAS COMPANY, NASHVILLE GAS  
COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY,  
INC., AND UNITED CITIES GAS COMPANY, A DIVISION OF ATMOS  
ENERGY CORPORATION FOR A DECLARATORY RULING  
REGARDING THE COLLECTIBILITY OF THE GAS COST PORTION  
OF UNCOLLECTIBLE ACCOUNTS UNDER THE PURCHASED GAS  
ADJUSTMENT ("PGA") RULES  
Docket No. 03-00209**

Dear Joe:

We are writing concerning the recent Discovery Responses we received from you on behalf of your client, United Cities Gas Company/Atmos Energy Corporation. After reviewing your responses, there are several requests that require further information and/or supplementation. We request that you provide additional information/supplementation to the following responses:

1. Discovery Request No. 1 (1) information for late charges was provided by year; we request that you provide a breakdown by month for each year in order to properly analyze the data; (2) the information concerning uncollectible revenue

was not provided and we request that you send this information immediately; and (3) Atmos mentions that they will provide the net write off information for the attrition year in the company's last rate proceeding through the latest month. Moreover, Atmos states that "uncollectibles" and "net write-offs" are not defined. Atmos has agreed to adhere to the Uniform System of Accounts and "uncollectibles" is defined. Further, during the Pre-Hearing Conference on July 22, 2003, the definition of "uncollectibles" was entered into the record. "Net Write-Offs" is a commonly used accounting term and it is not necessary for the CAPD to provide a definition to Atmos. We would appreciate if you provided this information by month for each year.

2. Discovery Request No. 2 We are still awaiting the information concerning monthly expenses recorded in Account 903. Atmos responded that the information is not readily available and you will research to provide the information. As you know it has been two (2) weeks since discovery responses were due and we have yet to receive this information.
3. Discovery Request No. 3 Atmos provided the SONP's (Shut-Off Due to Non-Payment data) for the years 1999 through 2003; they did not provide the data for 1995 through 1998. We requested the data concerning SONP's from the "beginning of the attrition year in the company's last rate proceeding." This response was incomplete and we request that the information be provided as requested on a monthly basis.
4. Discovery Request No. 4 The information provided was from October 2000 through July 2003. However, our request stated that you provide the information "from the beginning of the attrition year in the company's last rate proceeding through the latest month for which this information is currently available." Please provide the missing data for 1995 through September 2000. Additionally, amounts collected by Atmos personnel were not provided. We request that the data concerning collections by Atmos personnel and it be categorized on a monthly basis.
5. Discovery Request No. 5 We requested information concerning detailed job functions for Atmos personnel. The information provided was merely a breakdown of the position and the number employed in that position. Our request stated that Atmos "list this data by month and from the beginning of the attrition year in the company's latest rate proceeding through the latest month for which this information is currently available." Please provide the data as requested.

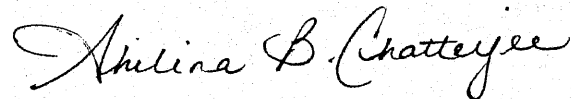
6. Discovery Request No. 7 Atmos responded that the information requested is not kept in the format requested in the ordinary course of business and that they will attempt to provide the information. We request that Atmos provide the information as it is available immediately.
7. Discovery Request No. 9 Atmos stated that in their most recent rate case filing they included \$130,117 as "bad debt" expense and provided a joint amount for net write-offs attributable to uncollectible account expenses. However, Atmos did not provide a response to the discovery request. Please state the potential impact of any changes on bad debt expense since the company's last rate case.
8. Discovery Request No. 10 Atmos responded that they have not performed an in-depth study on the factors that contribute to bad debt. However, we asked Atmos to "list and explain all factors which may have caused a change in bad debt expense since the beginning of the attrition year in the company last rate proceeding through the latest months for which such information is currently available." Kindly provide the requested information.
9. Discovery Request No. 11 Atmos responded that they do not have the data in the format requested and were not clear about the definition of the term "carry." This term is a frequently used accounting term. "Carry" means carrying charge or interest, such as the cost of short term debt, long term debt or equity used to finance the investment during the time the account or investment is "carried." Therefore, provide the information as requested in any available format.
10. Discovery Request No. 12 Atmos states that the term "short term debt" is unclear and not properly defined. Under the Uniform System of Accounts, "short term debt" is debt that is issued and matures in 365 days or less. Kindly amend or supplement your response accordingly.
11. Discovery Request No. 13 Atmos states that the information is not readily available in the format requested. Provide the information in the format available.
12. Discovery Request No. 14 Based on the fact that Atmos did not respond to the question because they were unable to respond, we have revised our question. Our original discovery request asked for the average balance outstanding, excluding late charges for the test year from the last rate case and the latest available year. We hereby revise the question to ask for the amounts of all accounts that are

Joe Conner, Esq.  
September 15, 2003  
Page 4

collected after the due date for the test year from the last rate case and the latest year available year. We request that the company provide this information.

We would appreciate if you provided the above requested information by Thursday, September 18, 2003 at the close of business. Thank you for your anticipated cooperation in this regard.

Sincerely,

A handwritten signature in cursive script, reading "Shilina B. Chatterjee".

Vance Broemel  
Shilina B. Chatterjee  
Assistant Attorneys General

cc: Patricia Childers

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